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JUN - 4 2004

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June 4, 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E. Suite 110
Washington, DC 20002

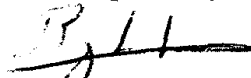
Re: Ex Parte Notification
CC Docket No. 02-6
CC Docket No. 96-45
CC Docket No. 97-21
File No. SLD-245592

Dear Ms. Dortch:

On behalf of the State of North Dakota, Information Technology Department, this is to advise the Commission that the undersigned met with Scott Bergmann, Legal Advisor for Wireline Issues to Commissioner Jonathan S. Adelstein, on June 2, 2004, to review the legal issues raised in the State's pending Petition for Reconsideration of the Commission's Order, FCC 03-240, released October 21, 2003, in the above-referenced matter. A Copy of the Summary of Petition for Reconsideration summarizing the issues discussed is attached for the information of the Commission.

Should there be any questions with respect to this presentation, please contact the undersigned.

Respectfully submitted,



Ramsey L. Woodworth

Special Assistant Attorney General
State of North Dakota

Cc w/encl. Scott Bergmann, Esquire

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List ABCDE

IMPOSITION OF THE “NEW AND FIRM”
YEAR 4 FILING REQUIREMENT
VIOLATED THE PAPERWORK
REDUCTION ACT AND IS UNLAWFUL

SUMMARY OF PETITION FOR RECONSIDERATION

File No. SLD-245592

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT

Paperwork Reduction Act Requirements

- Section 3507(h)(3) of the PRA requires OMB approval for any substantive or material change to an existing information collection requirement :
 - “An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this subchapter.”

Paperwork Reduction Act Requirements

- The PRA applies to all substantive and material changes in burdens associated with the collection of information, including “adjusting the existing ways to comply with any previously applicable instructions” and “transmitting, or otherwise disclosing the information . . .” 44 U.S.C. §3502(2) & (F).
- A collection of information includes “the act of collecting and disclosing information” and any “plan and/or other instrument calling for the collection or disclosure of information . . .” 5 C.F.R. §1320.3(c).

Paperwork Reduction Act Requirements

- Section 3512(a) of the PRA, Public Protection” requires that no penalty, such as dismissal of an application, may be imposed for a failure to comply with an unauthorized information collection requirement.
- Section 3512(b) provides that “the protection accorded by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.”

The NEW and FIRM Year 4 Filing Procedures

- “Year 4 features NEW and FIRM filing requirements. The January 18 deadline is a POSTMARKING deadline. . . . Unlike year 3, all materials associated with the Form 471 must be postmarked no later than January 18.” SLD WEBSITE, What’s New (November 2, 2000)
- The NEW and FIRM filing requirements made substantial and confusing changes to the filing instructions, imposing a more stringent hard and fast “postmark” deadline and changing the definition of completion from receipt by SLD to the “postmark” date.

The NEW and FIRM Year 4 Filing Instructions Were Not Approved By OMB.

While posted on the SLD Website, the New and Firm requirement was not mentioned in the FCC instructions attached to the Year 4 Form 471, which were virtually identical to those for Year 3.

- FCC Application for OMB approval (copy attached) for Year 4 Forms and Instructions sought only the extension of the existing Form and Instructions and did ***not*** request any revision of the currently approved collection.

The NEW and FIRM Year 4 Filing Instructions Were Not Approved By OMB

- OMB approval(copy attached) thus only extended the prior information collection approval for the continued use of the same forms and instructions as were used for Year 3.
- Furthermore, the electronic Forms failed to “display” any OMB control number, valid or otherwise, as required by Section 3512(b).

The NEW and FIRM Year 4 Filing Instructions Were Not Approved By OMB

- An application must be reinstated *nunc pro tunc* when it has been dismissed for failure to comply with an information collection requirement not approved by OMB.
 - *Portland Cellular Partnership, et al.* 11 FCC Rcd 19997 (1996) *aff'd sub nom Saco River Cellular v. FCC*, 133 F. 3d 25 (D.C. Cir. 1998), *cert denied*, 525 U.S. 813 (1998)
 - *Fair Oaks Cellular Partners*, 10 FCC Rcd 9980 (1995)
 - *Kent S. Foster*, 7 FCC Rcd 7971 (1992)

FCC PAPERWORK REDUCTION ACT SUBMISSION,
DATED JULY 20, 2000
OMB FORM 83-1, OMB CONTROL 3060-0806,
FCC FORMS 470 AND 471,
FOR EXTENSION OF CURRENTLY APPROVED
COLLECTION

PAPERWORK REDUCTION ACT SUBMISSION

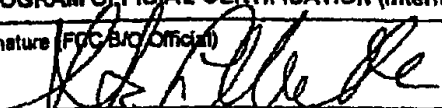
Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two (2) copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW Washington, DC

1. Agency/Subagency originating request Federal Communications Commission Common Carrier Bureau		2. OMB control number a. 3060 - 0806	
3. Type of information collection (check one) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input checked="" type="checkbox"/> Extension of currently approved collection d. <input type="checkbox"/> Reinstatement without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without OMB control number For b-f, note item A2 of Supporting Statement Instructions		4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular Submission b. <input type="checkbox"/> Emergency - Approval requested by 1/21/00 c. <input type="checkbox"/> Delegated	
		5. Will this information collection have a significant impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other: _____	
7. Title Universal Service - Schools and Libraries Universal Service Program			
8. Agency form number(s) (if applicable) FCC Forms 470 and 471			
9. Keywords reporting requirements, universal service, support, schools, libraries, telecommunications carriers, Telecommunications Act of 1996			
10. Abstract The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, Internet access, and internal connections. The information is used to determine eligibility.			
11. Affected public (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Individuals or household b. <input checked="" type="checkbox"/> Business or other for-profit c. <input checked="" type="checkbox"/> Not-for-profit institutions d. <input type="checkbox"/> Farms e. <input type="checkbox"/> Federal Government f. <input checked="" type="checkbox"/> State, Local or Tribal Government		12. Obligation to respond (check one) a. <input type="checkbox"/> Voluntary b. <input checked="" type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory	
13. Annual recordkeeping and reporting hour burden a. Number of respondents 60,000 b. Total annual responses 60,000 1. Percentage of those responses Collected electronically 90 % c. Total annual hours requested 440,000 d. Current OMB inventory 440,000 e. Difference (+, -) 0 f. Explanation of difference 1. Program change (+, -) 0 2. Adjustment (+, -) 0		14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs 0 b. Total annual costs (O&M) 0 c. Total annualized cost requested 0 d. Current OMB inventory 0 e. Difference (+, -) 0 g. Explanation of difference 1. Program change (+, -) 0 2. Adjustment (+, -) 0	
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Application for benefits b. <input type="checkbox"/> Program evaluation c. <input type="checkbox"/> General purpose statistics d. <input type="checkbox"/> Audit e. <input type="checkbox"/> Program planning or management f. <input type="checkbox"/> Research g. <input checked="" type="checkbox"/> Regulatory or compliance		16. Frequency of recordkeeping or reporting (check all that apply) a. <input checked="" type="checkbox"/> Recordkeeping b. <input checked="" type="checkbox"/> Third Party Disclosure c. <input checked="" type="checkbox"/> Reporting: 1. <input checked="" type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other	
17. Statistical methods: Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		18. Agency contact (person who can best answer questions regarding the content of this submission). Name: Adrian Wright Phone: 202-418-0854	

OMB CONTROL NUMBER: 3060- 0806	TITLE Universal Service - Schools and Libraries Universal Service Program
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19. Certification for Paperwork Reduction Act Submission

A. PROGRAM OFFICIAL CERTIFICATION (Internal FCC Use Only)

(1) Signature (FCC BIC Official) 	(2) Date 7/10/00
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On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

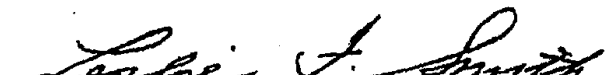
NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b)(3), appear at the end of the instructions. The certification is to be made with reference to those regulatory provisions as set forth in the instructions.

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under section 5 CFR 1320.8(b)(3) about:
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory)
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number.
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in item 18 of the Supporting Statement.

B. SENIOR OFFICIAL OR DESIGNEE CERTIFICATION

(1) Signature (FCC OMD) 	(2) Date JUL 21 2000
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3060-0806

July 2000

SUPPORTING STATEMENT

FCC Universal Service Forms: FCC Form 470 and Form 471.

A. Justification

1. On November, 8, 1996, the Joint Board released a recommended Decision in which it made recommendations to assist and counsel the Commission in the creation of an effective universal support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. On May 8, 1997, the Commission adopted rules providing discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit FCC Forms 470 and 471.

a. Submission of FCC Form 470 "Description of Service Requested and Certification."

Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The Administrator will post those Form 470 forms that request new services on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 C.F.R. § 54.505(b)(2), 47 C.F.R. § 54.504 (b)(3). Pursuant to section 254(h) of the Telecommunications Act of 1996, 47 U.S.C. § 254 (h), schools and libraries must certify under oath that: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for education purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library. 47 C.F.R. § 54.504(b)(2). For schools ordering telecommunications services at the individual school level (i.e., primarily non-public schools), the person ordering such services should certify to the Administrator the percentage of students eligible in that school for the national school lunch program (or the other acceptable indicators of economic disadvantage determined by the Commission). This requirement arises in the context of determining which schools are eligible for greater discounts being offered to economically disadvantaged schools. For schools ordering telecommunications services at the school district level, the person ordering such services for the school district should certify to the Administrator the number of students in each of its schools eligible for the national school lunch program (or the other acceptable

indicators of economic disadvantages). This requirement also arises in the context of determining which schools are eligible for greater discounts being offered to economically disadvantaged schools. 47 C.F.R. § 54.505(b)(1). Schools and libraries must also certify that they have developed a technology plan that has been approved by an authorized entity. The technology plan should demonstrate that the applicant will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use effectively the services ordered pursuant to the section 254(h) discount. 47 C.F.R. § 54.504(b)(2).

b. Submission of FCC Form 471 "Services Ordered and Certification."

Schools and libraries that have ordered telecommunication services, Internet access, and internal connections under the Universal Service Mechanism for Schools and Libraries must file FCC Form 471 with the Administrator. Form 471 requires schools and libraries to list all services that have been ordered and the funding needs for the current funding year. 47 C.F.R. § 54.504(b)(2). This form also gathers information from schools and libraries about the technology currently available to the entity and what is made possible by their application for universal service fund discounts.

2. All schools and libraries planning to order services eligible for universal service discounts must file FCC Forms 470 and 471. The purpose of this information is to help determine which schools and libraries are eligible for the greater discounts. Schools and libraries must certify to the Administrator that they have developed an approved technology plan via Form 471. This requirement is designed to help schools and libraries avoid the waste that might arise from requests for services that the schools and libraries would be unable to use for the educational purposes intended.
3. Applicants will be able to electronically file or mail their submissions. Copies of the forms will be available via the Administrator's website.
4. There will be no duplication of information. The information sought is unique to each respondent and similar information is not already available.
5. Entities directly subject to the requirements in the forms are primarily schools and libraries. The forms have been designed to impose the least possible burden on the respondents.
6. Failing to collect the information, or collecting it less frequently, would prevent the Commission from implementing section 254 of the 1996 Act and ensuring that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition.
7. Applicants are required to retain certain filings for five years. The records are needed in case the applicant is audited. If an applicant is audited, it should be able to demonstrate to the auditor how the entries in its application were provided.

8. Pursuant to 5 CFR 1320.8, the Commission placed a notice in the Federal Register. See 65 FR 3234, January 20, 2000. (Copy attached). No comments were received.
9. There will be no payments or gift to respondents.
10. The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under section 0.459 of the Commission's rules.
11. There are no questions of a sensitive nature with respect to the information collected.
12. The following represents the hour burden on the collections of information:
 - a. Submission of FCC Form 470 "Description of Service Requested and Certification."
 - (1) Number of respondents: Approximately 50,000 public school districts, private schools and public library systems.
 - (2) Frequency of response: On occasion. Each school and library must submit FCC Form 470, describing the services desired, to the Administrator.
 - (3) Annual burden per response: 4 hours. The total annual hour burden is 200,000 hours. This estimate includes the time needed for complying with the record retention requirement.
 - (4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: \$8,000,000.
 - (5) Explanation of calculation: We estimate that this obligation will take approximately 4 hours and will occur once a year for 50,000 schools and libraries. $50,000$ (number of respondents) \times 1 (number of submissions required) \times 4 (hours to prepare form, including time for reading instructions) \times $\$40$ per hour (including administrative staff time and overhead) = $\$8,000,000$.
 - b. Submission of FCC Form 471 "Services Ordered, Certification, and Termination."
 - (1) Number of respondents: Approximately 60,000 public school districts, private schools and public library systems.
 - (2) Frequency of response: On occasion. Each school and library must submit FCC Form 471, describing the services desired, to the Administrator.
 - (3) Annual burden per response: 4 hours. The total annual hour burden is 240,000 hours. This estimate includes the time need for complying with the record retention requirement.
 - (4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: \$9,600,000.
 - (5) Explanation of calculation: We estimate that this obligation will take approximately 4 hours and will occur once a year for 60,000 schools and libraries. $60,000$ (number of respondents) \times 1 (number of submissions

required) x 4 (hours to prepare form, including time for reading instructions) x \$40 per hour (including administrative staff time and overhead) = \$9,600,000.

Total Annual Burden = 200,000 + 240,000 = 440,000 burden hours.

13. (1) Total capital start-up costs component annualized over its expected useful life: \$0. The collections will not require the purchase of additional equipment.
(2) Total operation and maintenance and purchase of service component: \$0. The collections will not result in additional operation or maintenance expenses.
 14. There will be few, if any costs to the Commission because notice and enforcement requirements are already part of Commission duties. Moreover, there will be minimal cost to the Federal government since an outside party will administer this program.
 15. The public burden for the collections contained herein continues to be 440,000 burden hours. The collections are necessary to implement the universal service discount program for schools and libraries.
 16. The Commission will make the information required by 47 C.F.R. § 54.504 publicly available on the Internet. Other non-proprietary information will likely be made publicly available although the Commission does not have specific plans for doing so at this time.
 17. The Commission seeks continued approval to not display the expiration date for OMB approval of the information collections. Display of the expiration date on the forms and instructions would not be in the public interest because, after the six-month approval period, we would have to destroy all of the unused forms bearing the six-month expiration date. This would constitute waste and would not be cost effective.
 18. Applicants are required to retain certain records longer than three years. Applicants must retain records to be able to demonstrate to the auditor how the entries in their application were provided.
- B. Collections of Information Employing Statistical Methods.

The Commission does not anticipate that the collection of information will employ statistical methods.

OMB APPROVAL OF PAPERWORK ACT SUBMISSION,
DATED SEPTEMBER 1, 2000

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Judy Boley
Federal Communications Commission
445 12th Street SW.
Room 1-C804
Washington, DC 20554

09/01/2000

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 07/21/2000.

TITLE: Universal Service - Schools and Libraries
Universal Service Program

AGENCY FORM NUMBER(S): FCC-470, FCC-471

ACTION : Approved
OMB NO.: 3060-0806
EXPIRATION DATE: 09/30/2003

BURDEN	RESPONSES	BURDEN HOURS	BURDEN COSTS
Previous	60,000	440,000	0
New	60,000	440,000	0
Difference	0	0	0
Program Change		0	0
Adjustment		0	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

Sent electronically, 09/05/2000 14:13:04

PAPERWORK ACTION SUMMARY

01 SEP 2000
PAGE 1

OMB NUMBER: 3060-0806

EXP DATE : 3 Yrs

TITLE : Universal Service - Schools and Libraries Universal Service
Program

ACTION TAKEN: Approved

CHANGES FROM AGENCY SUBMISSION:

NONE

NEW TERMS OF CLEARANCE: NONE

NOTES: *This collection is used by the Commission to determine the
eligibility of schools and libraries ~~to receive~~ for the universal service fund.
No public comment received.*

SIGNATURES AND DATES:

DESK OFFICER

OIRA

David L. Jumper

DATE: *9/1/00*

DATE: _____

PAPERWORK REVIEW WORKSHEET

21 JUL 2000
PAGE 1

OMB NUMBER : 3060-0806
REVIEW TYPE: Regular
I.C. TYPE : Extension

RECEIVED: 07/21/2000
DUE DATE: 09/19/2000
DESK OFFICER: Edward C. Springer

AGENCY : Federal Communications Commission

TITLE: Universal Service - Schools and Libraries Universal Service
Program

AGENCY FORM NUMBER(S): FCC-470,FCC-471

KEYWORDS: REPORTING REQUIREMENTS
UNIVERSAL SERVICE
SUPPORT
SCHOOLS
LIBRARIES
TELECOMMUNICATIONS CARRIERS
TELECOMMUNICATIONS ACT OF 1996

ABSTRACT: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, internet access, and internal connections. The information is used to determine eligibility.

OBLIGATION TO RESP: P Required for benefits

SMALL ENTITIES: No
STATISTICAL METHODS: No

AFF PUB: P Not-for-profit institutions
Business or other for-profit
State, Local or Tribal Government

PURPOSE: P Appl for benefits
Reg or compliance

REQUIREMENTS: Recordkeeping
Third party disclosure
Reporting frequency:
On occasion

PAPERWORK REVIEW WORKSHEET

21 JUL 2000
PAGE 2

OMB NUMBER: 3060-0806

TITLE: Universal Service - Schools and Libraries Universal Service Program

	CURRENT RECORD	REQUEST
EXPIRATION DATE:	07/31/2000	3 Yrs
ANNUAL HOUR BURDEN:		
Number of respondents	60,000	60,000
Total annual responses	60,000	60,000
% Collected electronically	90 %	90 %
Burden Hours	440,000	440,000
Difference		0
Explanation of Difference		
1. Program Change		0
2. Adjustment		0

	CURRENT RECORD	REQUEST
ANNUAL COST BURDEN:		
Capital/Startup Costs	0	0
Annual Costs (O&M)	0	0
Total Annualized Cost	0	0
Difference		0
Explanation of difference		
1. Program change		0
2. Adjustment		0

LAST ACTION: Emergency Extension

LAST ACTION DATE: 06/21/2000

EXISTING TERMS OF CLEARANCE:

This information collection is approved subject to the following term of clearance:

1. On both FCC Form 470 and on FCC Form 471, the FCC shall clearly display at the top of the forms the following PRA disclosure statement: "An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection is #3060-0806."